88-1544

No.87-

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER Term, 1988

CITIZEN DALE ADAMS
Petitioner

v.

PROVIDENT MUTUAL LIFE INSURANCE CO.
OF PHILADELPHIA

&

NATIONAL LABOR RELATIONS BOARD
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CITIZEN DALE ADAMS
Pro se
c/o MORRIS ASSOCIATES
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PHILADELPHIA, PA. 19104
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Febuary 1989

QUESTION PRESENTED

1. DOES ARTICAL III SEC 2(1) OF THE U.S. CONSTITUTION, WHEN INTERPRETED TO THE FULL EXTENT OF ITS LATITUDE, PROHIBIT THIS NATION' FEDERAL COURTS FROM EXERCISING ITS FULL LEGAL JURISDICTION IN CASES BETWEEN PRIVATE AMERICAN CITIZEN AND PRIVATE OWNER(S) PARTY, THUS TENDING TO DEPRIVE CITIZENS THEIR CONSTITUTIONAL AMENDMENTS V & VII PROTECTION AGAINST UNWARRANTED AND UNJUSTIFIED PRIVATE PARTY ACTIONS?

THE PARTIES

The parties are petitioner, Citizen Dale Adams, Provident Mutual Life Insurance Co. of Philadelphia, National Labor Relations Board, The United States Court of Appeals for the Third Circuit, and The United States District Court for the Eastern District of Pennsylvania, as set forth in the caption of the case,

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CASES

None.

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None.

UNITED STATES CONSTITUTION

Fifth and Seventh Amendments to the United States Constitution.

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OPINIONS BELOW

The memorandum judgements of the United States Court of Appeals for the Third Circuit and the memorandum opinions of the United States District Court f or the Eastern District of Pennsylvania are attached

as Appendix A.

JURISDICTION

The judgement of the Court of Appeals for the Third Circuit was filed on December 1, 1988, affirming the opinions of the United States District Court for the Eastern District of Pennsylvania, filed on Novenber 3, 1988. The jurisdiction of this court is invoked pursuant to Article III Section 2(1) of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Article III Section 2(1) of the United States Constitution provides:

> The judicial power shall extend to all cases, in law and equity, arising under this constitution ... to controversies to which the United States may be a party; ... between a state, or the citizens thereof, and foreign states, citizen or subjects.

The Fifth Amendment of the United States Constitution provides:

> No person shall be held to answer... nor be deprive of life, liberty, or property, without due process of law;...

The Seventh Amendments of the United States Constitution provides:

> In suits at common law, where the value in controversy shall exceed twenty dollar, the right of trial by jury shall be preserved,...

STATEMENT OF THE CASE

A. Summary of pertinent facts

On June 27, 1986 at about 1pm, Petitioner Dale Adams was wrongfully discharged from his employment without reasonable cause or adequate notice, by Provident Mutual life Insurance Co. of Philadelphia (hereafter referred to as PML).

Lacking an adquate grievances proceedure within PML, Petitioner filed for jobless benefits with the Pennsylvania Office of Employment Security (BES) on June 29,

1986. BES found Petitioner ineligible for benefits based solely on PML's reason(s) for discharge. Petitioner proceeded with appeal of BES findings and BES decision was reversed, and benefits allowed, by Pennsylvania Unemployment Compensation Board of Review Referee on August 15, 1986.

Within one week, Petitioner reapplied for employment with PML, based on Referee's reversal judgement. PML showed no response to Petitioners reinstatement application.

In stead, PML filed to appeal Referee's reversal decision with Pennsylvania Dept. of Appeals/Board of Review, on August 27, 1986. On May 6, 1987the Appeals/Board of review entered an order affirming the referee's decision, but PML did not provide reemployment to Petitioner.

Petitioner then filed an "unfair labor practice" claim against PML with the National Labor Relations Board region 4 on Novenber 6, 1987. Four days later, the NLRB made it official that they would

treat the petition as untimely, and would, therefore, not issue a complaint against PML.

On Novenber 24, 1987, Petitioner further appealed his case to the NLRB General Counsel in Washington DC, refuting the untimely reasoning, for reconsideration. After what appeared to be some misunderstandings on the part of the NIRB concerning time allowances, extensions, etc., Petitioner's appeal was denied by the General Counsel.

REASONS FOR GRANTING THE WRIT

A. This case provides this Court with an opportunity to delineate the boundries of Artical III Section 2(1), and to exercise Its authority to protect the rights of the citizens of the United States and to enforce their individual rights as prescribed by the Fifth and Seventh Amendments of The United States Constitution.

The United States Court of Appeal for the Third Circuit has, in this case, impermissibly limited the boundries of Article III's

powers, both by Its appeal judgement and Its rehearing judgement (Appendic Case No. 88-1435) to afirm the opinions of the United States District Court for the Eastern District of Pennsylvania.

The opinions of the District Court, in which Petitioner is in contention, are as follows:

1. ... "Plaintiff has only alleged action by Provident, a private party, and pleintiff's claim must be dismissed."
2. ... "Plaintiff may not bring a claim against Provident under the Fifth Amendment either. The Fifth Amendment is a protection for individual against actions by the federal goverment and cannot be used here."
3. ... "This court does not have jurisdiction to hear unfair labor practice charges. These claims are within the jurisdiction of NLRB alone...This court also lacks jurisdiction to review the day to day decisions made by the General Counsel of the NLRB not to pursue unfair labor practice claims." (Appendix Case No. 88-2512).

Such holdings, by the United States Court of Appeal for the Third Circuit and the Uni-

ted States District Court for the Eastern District of Pennsylvania, certainly eviscerates and limits the judicial powers granted to the federal courts by Article III Section 2(1) of the United States Constitution. Clearly: Article III Section 2(1) extends to the federal courts of the United States the judicial power to protect and enforce the Constitution in all cases of law and equity between federal, states, municipal, and foreign goverments and citizen thereof; the Fifth Amendmend extends to the federal courts the obligation to protect and enforce every citizens right to due process; and the Seventh Amendment extends to the federal courts the duty to preserve every citizens right to a trial by jury.

Surely, since King Geoge III of England was not permitted to impose laws, rules, and regulations to deny American Citizens these rights, either, should private party/ies be permitted to do so.

B. The judgement orders of the United

States Court of Appeals for the Third Circuit, in Case No. 88-1435, and the opinions of the United States District Court for the Eastern District of Pennsylvania, in Case No. 88-2512, with Constitutional regards for the Judicial Power granted to the Supreme Court, should be overruled.

America's Founding Fathers, et al., who risked their lives and sacred honor in support of independence from the undemocratic and oppressive rule of King George of England; as well as those Founding Fathers, et al., who framed the United States Constitution, were committed to the judicial maxim ... that all men are crea ted equal; that they are endowed by their creator with certain inalienable rights; that amongst these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted amongst men, deriving their just powers from the consent of the governed; that, whenever any form of goverment becomes distructive of these ends, it

is the right of the people to alter and abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such forms, as to them shall seem most likely to effect their safety and happiness." (Declaration of Independence 1776).

The framer of the Constitution, as I gather, were very careful in their choice of words to protect the rights of the United States to life, liberty, property, and domestic tranquility, etc. They were concise in the way they constructed sentences to guarantee that no citizen of the United states shall ever again be subjected to the intransigent rule of men and/or women possessing the the mentality of King George III of England. Let us respectfully do the framers, of the Constitution of the United States, justice, both in our interpretations of their efforts, and in our applications of their direct and indirect implied meanings, when called upon to enforce their intents and pur-

pose.

The opinions expressed by the District court for Eastern Pennsylvania, intentional or unintentional, denied Petitioner his 5th Amendment right to due process, and also abriged his right to have his case heard and acted upon by a jury. The Court set into motion the legal basis upon which any private party, entity, corporation, mutual ownership or any private employer;, that, in fact possess the economic means (layoff, firing-type terminations, wage freezes and cutbacks, etc.), to determine private citizen employee's meaans, to a great extent, for life, liberty, property, and the pursuit of happiness;, to unconstitutionally claim immunity from the judicial powers of the federal courts, in cases arising from private party/ies's employment relationship/s with their employee/s, particularly non-union employees not adequately protected by National Labor Relations Board jurisdictions.

If the opinions expressed by the District

Court for Eastern Pennsylvania, in this case, are allowed to stand, their ill-disposed effects would tend to heighten the ever-growing arbitray and anarchistic powers of employers over employees; would made it possible for employers to enforce their wills and whims without regards for employees constitutional rights and protections against insecurity, infringement, etc.; and would indeed bring inti existence a class of King George-type oligarchs with alien de-facto powers over even the United States Federal Courts.

Furthermore, such opinions, such injustice, would sustain and make fertile the grounds of Revolution upon which will breed massive organized civil disobedience, contempt for authority, and civil war;, the inevitable outcome of which, as United States's history shows, will establish a new form of order more accommodating to, and in keeping with, the virtues of life, liberty, property, the pursuit of happiness, etc., for all citizens;, and would constitutionally guarantee that no private parties or otherwise could unconstitutionally or other-

wise seige control of government without the consent of the governed.

There is truth: that lessons not learned in our historical past are bound to repeat in our historical future, and ills left unatended will grow and fester until attended to.

The course of the prevailing situation does not need to materialize. The United States Supreme Court, by the judicial powers vested in it by Article III, etc., has the AUTHORITY, the JURISDICTION, and the DUTY to change the course before it is realized. GOD grant that the Supreme Court take action.

CONCLUSION

This case presents important constitutional and historical issues, in light of the ongoing contempt and abuse of citizens's rights and safety by employers and the inevitable consequences thereof, regarding the broad boundaries and far reaching judicial powers of Article III, Section 2(1) of the United States constitution. The U.S. Supreme Court here has a historically urgent opportunity to clarify and

reassert the judicial powers of the federal court system to protect the rights of United States Citizens. It is regretable that big entities like PML, et al., can maneuver around the U.S. Constitution and bill of rights until the case percolates to the Supreme Court. This case presents ans exposes an ongoing situation that cannot be good for the nation, and establishes or reestablishes a dangerous precedent wherein private entities routinely usurp the judicial powers vested in the federal courts of these United States of America. If the judicial powers are not reclarified under Article III, Section 2(1) etc., the lowerer courts might continue to allow private entities to get away with what I consider to be a sanctioning of nurder of individual income-earning United States Citizens. Therefore this Writ of Certiorari should be granted; and the judgement of the United States Court of Appeals for the Third Circuit and the opinions of the District Court for the Eastern District of Pennsylvania, should be overruled so that the constitution

can be realized to its fullest extent and the intent and purpose of the Framers may be fulfilled.

Respectfully submitted

Dale Adams

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Febuary 23, 1989

88-1544

No.87-

FEB 2 1989
JOSEPH F. SPANIOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

CITIZEN DALE ADAMS
Petitioner

v.

PROVIDENT MUTUAL LIFE INSURANCE CO.
OF PHILADELPHIA

&

NATIONAL LABOR RELATIONS BOARD
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 88-1435

ADAMS, DALE, CITIZEN

vs.

PROVIDENT MUTUAL LIFE INSURANCE COMPANY &
NATIONAL LABOR RELATIONS BOARD

Dale Adams

Appellant

SUR PETITION FOR REHEARING

BEFORE: GIBBONS, Chief Judge, SEITZ, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, and NYGAARD, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and

a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.*

*This Judgement was signed by Circuit Judge Walter K. Stapleton and filed Dec. 1, 1988.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 88-1435

ADAMS, DALE, Citizen

vs.

PROVIDENT MUTUAL LIFE INSURANCE COMPANY & NATIONAL LABOR RELATIONS BOARD

Dale Adams,

Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D. C. Civil Action No. 88-2512)
District Judge: Honorable James T. Giles

Submitted October 14, 1988

BEFORE: STAPLETON, GREENBERG, and SCIRICA
Circuit Judges

JUDGEMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgement of the district court be and is hereby affirmed.

Cost taxed against appellant.*

*This Judgement and Order was signed by Circuit Judge Walter K. Stapleton and filed Nov. 3, 1988.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CITIZEN DALE ADAMS	:	CIVIL ACTION
vs.	:	
PROVIDENT MUTUAL LIFE INSURANCE CO., et al.	:	NO. 88-2512

ORDER

AND NOW, this 12th day of May, 1988, upon consideration of defendent Provident Mutual Life Insurance Company's motion to dimiss plaintiff's complaint, and plaintiff's resonse thereto, it is hereby ORDERED that plaintiff's complaint is DISMISSED with prejudice for the reasons that follow:

1. Plaintiff is suing Provident Mutual Life Insurance Company (Provident) and the National Labor Relations Board (NLRB) for claims arising out of his termination by Provident and his subsequent filing of an unfair labor practice charge with the NLRB against Provident.

2. Plaintiff alleges that Provident unjustly fired him in violoation of his "right to life, liberty, and pursuit of happiness." Complaint, Petition for Consideration, p. 2. The

fourteenth amendment provides that

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; ...
> U. S. Const. XIV, S 1.

To state a claim under the fourteenth amendment, plaintiff must allege state action. Lugar v. Edmonson Oil Co., Inc., 457 U.S. 922, 935 (1982). Plaintiff has only alledge action by Provident, a private party, and plaintiff's claim must be dismissed.

Plaintiff may not bring a claim against Provident under the fifth amendment either. The fifth amendment is a protection for individual against actions by the federal government and cannot be used here.

3. Plaintiff next alledge that Provident unjustly refused ti reinstate after the Pennsylvania Compensation Board of Review concluded that plaintiff did not engage in willful misconduct and allowed him to collect unemployment benifits. Complaint, I 1, Affidavit, p. 2. The Unemployment Compensation Board is authorized to review applications for unemployment benifits but has no authority to reverse the personnel deci-

sions of employers. 43 Pa. Cons. Stat. S 751 et seq. (Purdon 1964). Thus, Provident does not have any obligation to rehire plaintiff as a result of the Board's decision and plaintiff's claim is dismissed pursuant to Fed. R. Civ. P. 12(b) (6).

4. Plaintiff next claims that the NLRB wrongfully refused to issue plaintiff's unfair labor practice complaint against Provident. This Court does not have jurisdiction to hear unfair labor practice charges. These claims are within the jurisdiction of the NLRB alone. See Burns v. Supermarkets General Corp., 615 F. Supp. 154, 160 (E.D. Pa. 1985). This court also lack jurisdiction to review the day to day decisions made by the General Counsel of the NLRB not to pursue unfair labor practice claims. Vaca v. Sipes 386 U.S. 171, 182 (1967) (citing United Electrical Contractors Ass'n v. Ordman. 366 F. 2d Cir. 1966). Therefore, plaintiff's claim is dismissed.*

*These Opinions and Judgements was signed by District Judge James T. Giles and filed May 12, 1988.